

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
)  
Implementation of the Cable ) MM Docket No. 92-260  
Television Consumer Protection )  
and Competition Act of 1992: )  
)  
Cable Home Wiring )

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**COMMENTS OF  
THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.**

The National Cable Television Association, Inc. ("NCTA") hereby submits its comments on the Commission's Further Notice of Proposed Rulemaking ("Further Notice") on cable home wiring.

**INTRODUCTION**

In its Further Notice, the Commission proposes to dilute its cable home wiring regulations to the detriment of the cable operator and MDU subscribers. First, the Commission requests comment on whether building owners should have the right to acquire loop-through wiring where all subscribers in a multiple dwelling unit want to switch to a new service provider. It also asks whether it should prohibit future installations of loop-through wiring configurations. Second, the Commission seeks comment on whether persons other than the subscriber or the cable operator should have the right to acquire the home wiring. As we demonstrate below and in the companion inside wiring proceeding, the landlord

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should not be free to interfere with the subscriber's rights by gaining control of the wiring in the entire building.

### DISCUSSION

Having been unsuccessful to date in overriding the 1992 Cable Act's home wiring provision by moving the demarcation point beyond the subscriber's dwelling unit, the telephone/wireless industries now seek another avenue to confiscate a cable operator's facilities. In a patently anticompetitive proposal, Liberty Cable/Nynex wish to take ownership of all loop-through wire in a building if all subscribers "simultaneously decide" to switch to an alternative provider. But allowing the building owner to take over the installed cable plant and consequently control the wiring will not assure subscriber choice. Indeed, the subscribers' wishes will be subordinated to the owner who will have the real power to decide which provider serves the building.

As explained in our Comments in the inside wiring proceeding, CS Docket 95-184, landlords and developers will fiercely resist competitive access by franchised cable operators in order to exact tolls of no benefit to their residents.<sup>1</sup> They will summarily evict incumbent cable operators in favor of SMATV's and hold their tenants hostage to operators who provide sufficient kickback to the landlord.<sup>2</sup>

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<sup>1</sup> See Comments of NCTA, Telecommunications Services-Inside Wiring, CS Docket No. 95-184, filed March 18, 1996.

<sup>2</sup> Multichannel TV Cable v. Charlottesville Quality Cable, No. 93-0073-C (W.D. Va., December 3, 1993) aff'd, 22 F.2d 546 (4th Cir. 1994) (franchised operator granted injunction against eviction by landlord who favored a SMATV which paid, in the court's words, "a kickback.")

In many instances, the landlord seeks to confiscate that plant in order to prohibit the franchised operator from reaching the customer, to provide the SMATV with free access to quality lines, and to shelter the SMATV from competition.

A “simultaneous decision” is merely a euphemism for a total and unilateral eviction, with little relationship to the choice of residents. It would not be unusual for a franchised cable operator, who incurred the cost and labor of installing the wiring in a multi-dwelling building to be unilaterally displaced by the building owner with another provider who strikes a deal with the building owner. Once the landlord decides to take the loop-through wiring, the subscribers would have little choice but to accept the new provider.

This proposal is not only grossly unfair to the cable operator but it undermines the rationale for allowing consumers to acquire their internal wiring in the first place -- to enable them to choose among video distribution media. In this case, the landlord, not the subscriber, determines who the preferred video provider will be. If the Commission validates this circumvention of the 1992 Act, it will merely erect new barriers to consumer choice.

In adopting its cable home wiring rules, the Commission recognized that the provision should not be construed in a manner that would discourage cable operators from continuing to extend service to unwired dwellings by failing to take into account the property, contractual, and access rights of cable operators.<sup>3</sup> The Liberty/Nynex proposal would stomp on such rights, ensuring that cable operators

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<sup>3</sup> Notice of Proposed Rulemaking, MM Docket No. 92-260, 7 FCC Rcd 7349.

hesitate before wiring a building. The proposal to divest cable of ownership and control of MDU wiring will simply empower landlords to continue profiteering at the public expense, and will undo years of work at the state level to gain lawful access to premises in order to present customers with genuine choice.

The Commission assumes that landlords will act on behalf of the interests of their residents. But the record is that landlords will act for their own enrichment, at the expense of the customer and at the expense of turning over to LECs' the very facilities with which cable operators could present competition to the LEC's monopoly business. The proposal is at odds with all that Congress and the Commission has been trying to do to promote competition.<sup>4</sup> And, as we discuss in the inside wiring proceeding, without its distribution plant in the building, the cable operator will lose its ability to market alternative or supplementary services, such as telephony, Internet access, pay-per-view, interactive services, to the individual subscriber.

If the Commission were to proceed on this mistaken course, at a minimum it would need to condition the exercise of such rights on landlords' and developers'

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<sup>4</sup> For example, when adopting the 1984 Act's access to easements clause, Congress warned that "Any private arrangements which seek to restrict a cable system's use of such easements or rights-of-way which have been granted to other utilities are in violation of this [law] and not enforceable." H.R. Rep. No. 934, 98th Cong., 2d Sess. at 59, 1984 U.S.C. C.N. 4655, 4696. Yet the Commission proposes to grant every landlord the power to exclude. In 1996, Congress outlawed state and local laws which prevent facilities based competition, and has even reached into property covenants and homeowners association rules to free DBS. Telecommunications Act, section 207. Yet the Commission plans to permit landlords to simply take the facilities which such laws permit to be installed.

surrender of the right to exclude. The Commission would also need to adopt strict provisions -- assuming such provisions could be effectively enforced -- precluding the landlord or developer from acting as the resident's proxy holder; assuring that the "decisions" of residents are made after full and fair campaigns; and prohibiting the buying or influencing votes, including proxies in leases, or profiteering from the result of the campaign. Otherwise, the Commission will simply have divested incumbent cable operators of their property and turned it over to landlords and developers who will use it for their own enrichment, rather than for providing choices to consumers.

In addition, although many cable systems are now constructed with "home run" wiring configurations, cable operators should retain the flexibility to wire buildings with a loop-through configuration in the future. The nature of the building construction and the economics may dictate that loop-through wiring is the best system architecture in the multiple dwelling unit building.

With regard to whether the landlord should have the right to acquire the cable home wiring if the subscriber elects not to purchase the wire upon termination of service, we submit that the same considerations that apply in the takeover of the wiring in the entire building should apply here. Even if the subscriber chooses not to acquire its internal wiring, if and when he or she moves, the wiring should be available to a subsequent occupant unless the cable operator exercises its right to remove the wiring after service is terminated. This is the only way to ensure that the customer -- not the landlord -- chooses the provider.

**CONCLUSION**

For the foregoing reasons, the Commission should deny the Liberty/Nynex proposal on loop-through wiring.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Dan L. Brenner", written over a horizontal line.

Daniel L. Brenner

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